

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

AURORA REGINO,  
Plaintiff,  
v.

SUPERINTENDENT KELLY STALEY,  
in her official capacity;  
CAITLIN DALBY; in her  
official capacity; REBECCA  
KONKIN, in her official  
capacity; TOM LANDO, in his  
official capacity; EILEEN  
ROBINSON, in her official  
capacity; and MATT TENNIS, in  
his official capacity,

Defendants.

No. 2:23-cv-00032-JAM-DMC

**ORDER DENYING MOTION TO  
INTERVENE**

The Genders and Sexualities Alliance Network (the "GSAN") seeks to intervene as a defendant in this suit brought by Aurora Regino ("Plaintiff") against Chico Unified School District Superintendent Kelly Staley and school board members Caitlin Dalby, Rebecca Konkin, Tom Lando, Eileen Robinson, and Matt Tennis ("Defendants") in their official capacities. See Mot. to Intervene ("Mot."), ECF No. 22. Plaintiff opposes intervention. See Opp'n, ECF No. 34. The GSAN replied. See Reply, ECF No. 38.

For the reasons set forth below, the Court DENIES the GSAN's

1 motion.<sup>1</sup>

3           I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

4           On January 6, 2023, Plaintiff filed her complaint against  
5 Defendants alleging four causes of action under 42 U.S.C. § 1983:  
6 two facial challenges to AR 5145.3 (the "Regulation") under  
7 substantive and procedural due process; and two as-applied  
8 challenges to the Regulation under substantive and procedural due  
9 process. See Compl., ECF No. 1. Plaintiff, who has two children  
10 in the Chico Unified School District, claims that the Regulation  
11 violates her constitutional parental rights because it  
12 (1) permits school personnel to socially transition students  
13 expressing a transgender identity and (2) prohibits school  
14 personnel from informing a student's parents of this change  
15 unless the student expressly authorizes them to do so. Compl.  
16 ¶ 2.

17           A couple of weeks later, Plaintiff filed her motion for  
18 preliminary injunction seeking to enjoin Defendants and all  
19 district employees from: (1) socially transitioning current  
20 students without obtaining informed consent from the students'  
21 parents or guardians; (2) not obtaining informed consent from the  
22 parents or guardians of all current students who have previously  
23 been socially transitioned or are currently being socially  
24 transitioned; (3) socially transitioning Plaintiff's children  
25 without her informed consent; and (4) not obtaining Plaintiff's  
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27           <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled  
for March 28, 2023.

1 informed consent if her daughters have been socially transitioned  
2 in the past or are still being socially transitioned. After full  
3 briefing and oral argument, the Court denied Plaintiff's motion.  
4 See Order, ECF No. 37.

5 On February 14, 2023, the GSAN filed the operative motion to  
6 intervene on the side of Defendants. See Mot. The GSAN is a  
7 non-profit organization that provides a variety of support,  
8 organizational, and advocacy services for queer youth across the  
9 country; it has two student-run clubs within the Chico Unified  
10 School District. Id. at 3. The GSAN seeks to assert the  
11 interests of queer students in the continuation of the  
12 Regulation, particularly with respect to transgender students.  
13 Id. at 1. The GSAN asserts that the Court should allow either  
14 permissive intervention or intervention as of right. Id.  
15 Plaintiff opposes the motion. See Opp'n, ECF No. 34. The GSAN  
16 replied. See Reply, ECF No. 38.

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## II. OPINION

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### A. Legal Standard

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The Ninth Circuit applies a four-part test in evaluating a  
21 motion for intervention as of right pursuant to Federal Rule of  
22 Civil Procedure (FRCP) 24(a): (1) the application for intervention  
23 must be timely; (2) the applicant must have a "significantly  
24 protectable" interest relating to the property or transaction  
25 that is the subject of the action; (3) the applicant must be so  
26 situated that the disposition of the action may, as a practical  
27 matter, impair or impede the applicant's ability to protect that  
28 interest; and (4) the applicant's interest must not be adequately

1 represented by the existing parties in the lawsuit. Southwest  
2 Ctr. for Biological Diversity v. Berg, 268 F.3d 810, 817 (9th  
3 Cir.2001). Each of these requirements must be met before an  
4 intervention of right can be allowed. NAACP v. New York, 413  
5 U.S. 345, 369 (1973).

6 The test is applied "liberally in favor of potential  
7 intervenors," and a court's analysis is "guided primarily by  
8 practical considerations." Southwest, 268 F.3d at 818. The  
9 burden is on the party seeking intervention to demonstrate that  
10 each of the elements are satisfied before a court will provide  
11 the party with a right to intervene. League of United Latin  
12 American Citizens v. Wilson, 131 F.3d 1297, 1302 (9th Cir.1997).

13 Compared with an intervention as of right, a court has broad  
14 discretion in deciding a motion for permissive intervention;  
15 under FRCP 24(b), a party may be allowed to intervene so long as:  
16 (1) the motion is timely; (2) independent grounds for  
17 jurisdiction exist; and (3) the applicant's claim or defense  
18 shares a question of law or fact with the underlying action.  
19 League of United Latin American Citizens, 131 F.3d at 1308. The  
20 Ninth Circuit has instructed courts to consider other factors  
21 when determining whether to exercise their discretion to permit  
22 permissive intervention, namely: (1) the nature and extent of  
23 applicant's interest; (2) the applicant's standing to raise  
24 relevant legal issues; (3) the legal position the applicant seeks  
25 to advance and its relation to the merits of the underlying case;  
26 (4) changes in the litigation; (5) whether the applicant's  
27 interests are adequately represented by other parties;  
28 (6) whether intervention will prolong or unduly delay the

1 litigation; and (7) whether the applicant will significantly  
2 contribute to the full development of the underlying factual  
3 issues and to the just and equitable adjudication of the legal  
4 issues presented. Spangler v. Pasadena City Bd. of Ed., 552 F.2d  
5 1326, 1329 (9th Cir. 1977).

6       B. Analysis

7           1. Intervention as of Right

8              a. Significantly Protectable Interest

9           The GSAN claims that it has a direct interest in the instant  
10 case because (1) it co-sponsored AB 1266, which led to the  
11 eventual adoption of the Regulation in the Chico Unified School  
12 District and (2) there are two GSAN-affiliated student clubs in  
13 the district. Mot. at 7-8. The GSAN further contends that a  
14 disposition in Plaintiff's favor would impede the organization's  
15 mission to support queer students and foster environments where  
16 queer students can seek community or support from their peers.

17 Id. at 8. Plaintiff responds that the instant case concerns the  
18 constitutional rights of parents, so the GSAN has no legally  
19 protected interest to defend. Opp'n at 4. Plaintiff also argues  
20 that the GSAN's references to its co-sponsoring of AB 1266 and  
21 the potential chilling effects on its student clubs in Chico are  
22 immaterial because they don't relate to the Regulation, which  
23 will have no effect on AB 1266 or the operation of GSAN-  
24 affiliated clubs if it is overturned. Id. at 4-5.

25           The Court finds Plaintiff's argument persuasive. A party  
26 seeking to intervene must establish that its interest in the  
27 outcome of the suit is "direct, non-contingent, and substantial;"  
28 it is sufficient for a party to demonstrate that the resolution

of the plaintiff's claims will actually affect the party.

California ex rel. Lockyer v. United States, 450 F.3d 436, 441 (9th Cir. 2006). The GSAN has failed to meet its burden. At issue in the instant case is a local school board regulation, not the state statute AB 1266 that the GSAN co-sponsored. Regardless of the outcome of the instant case, AB 1266 will remain in effect. Also, the GSAN has failed to demonstrate how its general management and support of the two GSAN-affiliated clubs in the Chico Unified School District will be directly or substantially affected by an adverse disposition. Regardless of the outcome of the instant case, the GSAN and its affiliated clubs will still be permitted to operate in the district and continue their mission of supporting queer students and fostering supportive environments for them. The Court finds that the GSAN has failed to establish that it has a significantly protectable interest in the instant case. Accordingly, the Court denies the GSAN's motion to intervene as of right.

#### b. Remaining Factors

Because the failure to satisfy any one of the requirements for an intervention as of right is “fatal to the application,” the Court need not, and does not, address the remaining requirements. Perry v. Proposition 8 Off. Proponents, 587 F.3d 947, 950 (9th Cir. 2009).

## 2. Permissive Intervention

a. Timeliness and Independent Jurisdictional Basis

27 The Court notes that (1) the parties agree that the  
28 independent jurisdictional grounds requirement is not applicable

1 to this motion and (2) Plaintiff does not contest that the GSAN's  
2 motion is timely. Accordingly, the Court finds that the GSAN's  
3 motion is timely and will proceed to address the remaining  
4 threshold requirement and discretionary factors.

5                   b. Common Question of Law or Fact

6                  The GSAN argues that its proposed defense—that policies like  
7 the Regulation don't infringe upon parental rights and are  
8 necessary to protect the constitutional rights of transgender  
9 students—is directly responsive to Plaintiff's claims and will  
10 not expand the legal issues of the instant case. Mot. at 11.  
11 The GSAN notes that it is only seeking to defend the Regulation  
12 and is not seeking any additional relief or raising new issues.  
13 Id. Plaintiff responds that the GSAN shares no common question  
14 of law or fact because the GSAN seeks to litigate whether the  
15 Regulation is constitutionally required instead of whether the  
16 Regulation violates the constitutional rights of parents. The  
17 Court disagrees.

18                 Defendants raised a similar defense to the GSAN in their  
19 opposing brief to Plaintiff's motion for preliminary injunction  
20 and during the subsequent oral arguments on that motion, namely  
21 that (1) students have a constitutional right to privacy with  
22 respect to their sexual orientation and gender identity and  
23 (2) parental rights do not extend as far as Plaintiff claims such  
24 that the Regulation infringes on her constitutional rights.  
25 Opp'n, ECF No. 21 at 14-19, Motion Hearing, ECF No. 33. Thus,  
26 the Court finds that the GSAN has raised a common question of law  
27 that meets the threshold requirement for permissive intervention.  
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1                   c. Discretionary Factors

2                 While the GSAN has met the threshold requirements for  
3 permissive intervention, the Court has broad discretion to deny  
4 intervention, and the Court exercises that discretion in this  
5 case. Donnelly v. Glickman, 159 F.3d 405, 412 (9th Cir. 1998).  
6 The Court finds that the GSAN (1) has not sufficiently  
7 demonstrated that Defendants will not adequately represent its  
8 interests in this litigation and (2) will not significantly  
9 contribute to the full development of the underlying factual  
10 issues or to the just and equitable adjudication of the legal  
11 issues presented.

12                 In the instant case, there is a presumption of adequacy in  
13 Defendants' representation because both Defendants and the GSAN  
14 share the same "ultimate objective" of maintaining the  
15 Regulation; this presumption can only be overcome by a  
16 "compelling showing" that Defendants will inadequately represent  
17 the GSAN's interests. W. States Petroleum Ass'n v. California  
18 Occupational Health & Safety Standards Bd., No. 2:19-CV-01270-  
19 JAM-DB, 2019 WL 6324076, at \*2 (E.D. Cal. Nov. 26, 2019). The  
20 GSAN has failed to make such a showing, particularly considering  
21 the substance of Defendants' pleadings and oral arguments before  
22 this Court asserting the legality of the Regulation and the  
23 privacy rights of students, including queer students. See Opp'n,  
24 ECF No. 21, Motion Hearing, ECF No. 33. As for the GSAN's  
25 contributions to the development of the underlying factual issues  
26 and the adjudication of the legal claims of the case, the Court  
27 finds that the GSAN cannot offer any additional, material facts  
28 that are not already known to the parties; the GSAN also raises

1 similar legal arguments as the Defendants. GSAN's motion for  
2 permissive intervention is denied.

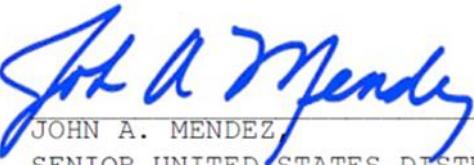
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4 III. ORDER

5 For the reasons set forth above, the Court DENIES the GSAN's  
6 motion to intervene.

7 IT IS SO ORDERED.

8 Dated: April 14, 2023

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11 JOHN A. MENDEZ  
12 SENIOR UNITED STATES DISTRICT JUDGE

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